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10/759,371	01/15/2004	Connie T. Marshall	UV-3 Cont. 5	9941

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EXAMINER	
CHIN, RICKY	

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2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/759,371	MARSHALL ET AL.	
	Examiner	Art Unit	
	RICKY CHIN	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08). Paper No(s)/Mail Date *11-30-07;6-05-08;7-9-08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed June 5, 2008 have been fully considered but they are not persuasive.

Applicant argues that Banker does not teach or suggest a "perceived partial transparency" by relying on col. 23 lines 29-46 and the "A" in Fig.22. Applicant argues that Banker discusses how an opaque character (as shown in Fig. 22) can be displayed on either an opaque background of another color, or the original unmodified active video.

However, while Banker discusses an opaque character which can be displayed on an opaque background or the active video, the invention is not limited to this. Banker (col.4 lines 1-28 discloses that the background pixels of the symbols can be made transparent and that each pixel of a graphics screen has a defined color which can be selected to be a transparent color making use for easy overlay on the active video to show cutout portions and other special effects). Nonetheless, when the character shown is on the original active video, it is done so by inverting the background pixels of the symbol selected to be transparent and filling in the active video background pixels for display which is only done so when the background pixels are chosen to be transparent. Moreover, col.3 lines 36-67and col. 24 lines 54- col.25 lines 40 discloses of selecting the pixel color of each symbol which can be one of the background or foreground color, thereby making the symbol transparent if need be. Furthermore, even if the character was fixed to be opaque, the background which the character is displayed on is made

transparent and therefore there is "perceived partial transparency" where the active video can be at least partially perceived as claimed, since any part of an overlayed graphic which is transparent including the background pixels of the symbol would yield to the active video being partially perceived.

For the reasons as stated above, the previous rejections are maintained.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent; or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, *except* that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English.

3. Claims 1-2, 4 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Banker et al, US 5,579,057 (hereinafter "Banker").

Claim 1, Banker discloses:

A control processor (fig. 2b [128]) operating a control program (col. 8, lines 38-47) for commanding an on screen display processor (fig. 11 [127], col. 2, lines 3-11) which executes program codes (col. 14, lines 49-53) to overlay an interactive program guide with a perceived partial transparency over a television program (col. 4, lines 25-28, col. 12, lines 3-11, disclose on screen display(s) "overlayed" on active video) can be at least

partially perceived by a television viewer through the interactive program guide (col. 4, lines 1-21 disclose assigning group of colors to a pixel to be a transparent color. It should be noted that active video being overlayed by transparent pixels of on screen display content would inherently be perceptible to a viewer. It should also be noted that interactivity of the on screen display is inherently implied in Banker through col. 2, lines 23-29. It should also be noted that the electronic program guide is presented as the on screen display in Banker).

Claim 2:

The computer readable storage media of claim 1, wherein the instructions allow variability of a weight of the transparency relative to a display image. (Col. 4, lines 16-28 disclose a range of colors can be selected to be a transparent pixel. One technique is by assigning a value of zero to the luminance component for nonzero chrominance components).

Claim 4:

The computer readable storage media of claim 2, wherein the instructions allow a user to vary the weight of the transparency. (Rejected as applied to claim 2 above).

Claim 12 is rejected as applied to claims 1-2 above.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in **Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966)**, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: ***(See MPEP Ch. 2141)***

a. Determining the scope and contents of the prior art;
b. Ascertaining the differences between the prior art and the claims in issue;
c. Resolving the level of ordinary skill in the pertinent art; and
d. Evaluating evidence of secondary considerations for indicating obviousness or nonobviousness.

5. Claims 3, 5-6, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banker et al.

Claim 3:

Banker discloses the claimed invention as applied to claim 2 above, but not wherein the instructions allow a display of the percentage of the weight of the transparency as claimed.

However, providing a percentage as the weight of transparency as opposed to a specific color value disclosed in Banker is an arbitrary design preference and thus, would have been obvious to one skilled in the art.

Claim 5:

Banker discloses the claimed invention as applied to claim 2 above, but not wherein the instructions allow automatic setting of the weight of the transparency upon program guide activation to the weight set at the time of most recent program guide deactivation as claimed.

However, it would have been obvious and logical to expect the invention of Banker to maintain previous setting(s) for color transparency of pixels upon re-activation of the on screen display to maintain the viewer's preferred settings.

Claim 6:

Banker discloses the claimed invention as applied to claim 2 above, but not wherein the instructions present the program guide so that portions of the program guide are opaque relative to the display image.

However, since Banker discloses the ability to set a transparent color value to a pixel (see discussion in claim 1), the converse would have been obvious and reasonably expected. That is, setting a color value to make the pixel opaque.

Claim 11 is rejected as applied to claims 1-3 above.

6. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banker et al as applied to claim 1 above and further in view of Young et al, US 5,479,268.

Claim 7:

Banker discloses the invention as applied to claim 1 above, but not wherein the instructions present the program guide in a grid.

However, presenting program guide data in a grid is well known and used as evidenced by Young (figs. 1-7,19, col. 6, lines 55-56). Thus, the combination of Banker and Young as a whole would have rendered obvious presenting program guide data in a grid as claimed.

Claim 8:

The combination of Banker and Young further teaches wherein the instructions present one dimension of the grid corresponding to television channels. (Young figs. 1-7).

Claim 9:

The combination of Banker and Young further teaches wherein the instructions present one dimension of the grid corresponding to broadcast times. (Young figs. 1-7).

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banker et al as applied to claim 1 above and further in view of Hamilton et al, US 5,579,055.

Claim 10:

Banker discloses the invention of claim 1, but not scrolling the program guide as claimed. However, such feature is well known and used as evidenced by Hamilton (Abstract, col. 2, line 16). Thus, the combined teachings of Banker and Hamilton as a whole would have rendered obvious the capability of scrolling EPG data for added flexibility in channel surfing.

Conclusion

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contacts

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky Chin whose telephone number is 571-270-3753. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on 571-272-7296. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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